Exhibit N

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: CENTURYLINK SALES PRACTICES AND SECURITIES LITIGATION	)	File No. 17-md-2795 (MJD/KMM)
This relates to: 18-cv-296(MJD/KMM)	)	Courtroom 8E Minneapolis, Minnesota Tuesday, October 1, 2019

BEFORE THE HONORABLE KATE M. MENENDEZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

PRETRIAL CONFERENCE

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Proceedings recorded by digital recording;
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P R O C E E D I N G S

IN OPEN COURT

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THE COURT: Okay. Welcome, everybody.

We are here for a pretrial conference, which seems like it should be early in the litigation. I know we've been at this for a while. But we are here to set a schedule and discovery limitations that will control next steps in this part of the litigation.

I want to begin by making sure I know who is here. If I could get the plaintiffs to -- plaintiffs' counsel to introduce yourselves, starting here, I think.

MR. DeJONG: Tim DeJong with Stoll Berne in Portland.

THE COURT: DeJong?

MR. DeJONG: Yes.

THE COURT: Okay. Welcome. How are you?

MR. DeJONG: Very good. Thank you.

THE COURT: All right.

MR. MATHAI: Michael Mathai with Bernstein Litowitz Berger & Grossmann, New York.

THE COURT: Excellent. Welcome to you. And it's Mathai?

MR. MATHAI: Yes, ma'am.

THE COURT: Okay. Good. Welcome.

MR. BLATCHLEY: Good afternoon, Your Honor. Mike Blatchley from Bernstein Litowitz Berger & Grossmann.

THE COURT: All right. Welcome to you as well.

MR. BLATCHLEY: Thank you.

MR. MUELLER: Good afternoon, Your Honor. Keil Mueller with Stoll Berne.

THE COURT: All right. Welcome.

MR. FISHBEIN: Good afternoon, Your Honor. Greg Fishbein, Lockridge Grindal Nauen.

THE COURT: Okay. Welcome, Mr. Fishbein.

MR. FISHBEIN: Thank you.

THE COURT: And we have somebody in the back row.

UNIDENTIFIED MALE SPEAKER: Yes. Good afternoon, Your Honor. (Inaudible) on behalf of lead counsel and (inaudible).

THE COURT: Okay. Thank you. Welcome.

And here on behalf of the defendants today.

MR. GIBBS: Good afternoon, Your Honor. Patrick Gibbs from Cooley.

THE COURT: Excellent. Welcome.

MR. MCNAB: Good afternoon, Judge Menendez. Bill McNab, Weinstine, on behalf of the defendants.

THE COURT: Good to see you again.

MR. MCNAB: Thank you, Your Honor. You as well.

MS. LEE: Good afternoon, Your Honor. Lauren Lee

for Cooley on behalf of the defendants.

THE COURT: Okay. Welcome to you as well.

And have you all decided in most matters who is going to be taking the lead for this table?

MR. BLATCHLEY: I will, Your Honor.

THE COURT: Okay. Great. Mr. Blatchley.

And how about for you all?

MR. GIBBS: I will, Your Honor, with a couple of exceptions for items touching on (inaudible).

THE COURT: Great. Okay.

Let's jump right in. This is, I have to say, probably one of the more complicated pretrial conferences I've had, in large part, because there's quite a few areas of dispute. And I'm just going to kind of lead us through some of them. I have made some plans with respect to some areas of disagreement. I need to hear from you about others, but I want to make sure to hear everyone out.

At the end what I may do is send you back to the drawing board to agree on a little bit more language with respect to a couple of discreet areas where what I'm inclined to do is something between the two options that you have proposed. And I find it tends to be a little more workable to have you take a stab at that language in the first instance rather than me. I am happy to do it, but I tend to know fewer things about the nuances of your case and

that makes my efforts occasionally ham-handed. So -- but we will see if that is what arises when we move forward.

Why don't we go ahead and get started with the sort of big, right-out-of-the-gate question about the extent to which it is appropriate to expect the defendants to produce all of or a large part of documents that have been produced in other cases in an effort to save time and resources.

So if you want to come to the podium on behalf of the plaintiffs and let me know your thoughts about what exactly you're advocating for and why you think that makes sense.

MR. BLATCHLEY: Thank you, Your Honor. Can you guys -- can I be heard?

THE COURT: Good.

MR. BLATCHLEY: Thank you again, Your Honor. And I'm glad you started there.

As you will note in the draft 26(f) report that we submitted, that's kind of one of the first things that we have tried to get defendants' cooperation on in terms of streamlining and making discovery very efficient in this case. We think that --

And, again, I just want to make sure the court is aware. The actual request that we put in our 26(f) report, it's limited to the three actions, the related actions as we

define them. That's the Minnesota Attorney General's pending litigation against CenturyLink; it is the consumer case that Your Honor knows very, very well; and the related derivative action that is, again, part of the MDL.

We asked for the production of those documents right out of the gate because, again, those are documents that the defendants have already reviewed, collected. They've done their privilege review. They've produced to another party. And we believe they're indisputably relevant to our case.

And, in particular, the Minnesota Attorney General production is -- I don't think there can be a reasonable dispute about its relevance here. You know, we've had this conversation with defendants for two months now. I haven't heard a cogent articulation of how it could be possibly irrelevant to this case, but that's the position that we understand that they're taking.

Again, we provided some cites in our letter to Your Honor on Friday. Our complaint is replete with references to discovery and allegations in the Minnesota Attorney's General action. The fact that 3.5 million customers, again, representing between a third and a half of CenturyLink's overall customer base, were overbilled, that is an allegation that's derived from the Minnesota Attorney General action. That, again, is something that -- and other

attorney general actions and investigations. That's something that goes to materiality, falsity scienter to the core, aspects and elements that we're required to prove in this case.

We haven't heard anything from the defendants about let's, okay, so we'll agree to produce that part of the discovery. And, again, that would be, you know, more burdensome from defendants' point of view if they wanted to parse it out, as they seem to want to do.

THE COURT: Okay. Let me ask a couple of questions on this vein.

You asked for an awful lot of discovery in this case. You're seeking permission to have unlimited document requests. And, in fact, you seem to have already served more document requests than the other side is suggesting as a limit, which we'll put off for a moment what that would mean if I agree with them.

If you receive some sort of blanket order requiring them to produce the things that have already been produced, how will we all collectively be assured that there will be a commensurate reduction in discovery practices that you undertake because they will be unnecessary and redundant?

MR. BLATCHLEY: I think, Your Honor, first off, I think the production of those documents would, again, help

the parties understand what the scope of discovery already is. We're kind of at a very, you know, significant disadvantage here in terms of figuring out what that universe is. I don't have a crystal ball, because I haven't seen the documents that have been produced in that litigation.

I understand the court's concern about, okay, so you will get all this litigation anyways, but you still need to prove your case. So, of course, we're entitled to other documents down the road.

Again, Your Honor, I think the way we -- the way we manage that potential issue that you flagged is by having an agreement about when the substantial completion of document discovery is going to be. That's another thing that defendants have opposed. They do not want that deadline.

THE COURT: Yep, we will talk about that in a minute. But before we get to sort of the mechanics, my question is this: Presumably, just to use the document requests that you have already served as a hypothetical example, some of those document requests are inclusive of information that you would expect to be produced in the attorney general's -- in the discovery that was produced with respect to the attorney general litigation. Right?

So who is going to take the, if I were to grant

some degree of this replicated production, who is going to take the production, overlay it against your requests and decide what is no longer necessary or what is contemplated? Is that something you will do? Do you expect them to do a production that responds to all your requests, even if what they're referring to are in the other production? How do you anticipate this working as a practical matter?

MR. BLATCHLEY: As a practical matter -- that's a great question, Your Honor. As a practical matter, this is how I think it should proceed. We get the production of the three-litigation discovery. I mean, literally, it's a push of a button. Defendants have that on a hard drive. They can -- they can drop it off tomorrow. We do the job of reviewing that production and seeing what is left in the discovery we're going to need in our case.

And I want to just make one thing very clear about these productions. This is something that's routinely done in cases like this one, when you have related -- you know, Judge Davis approved of it in the case we cited in the 26(f).

THE COURT: I think it's quite clear to me from looking at the case law from both sides that I have the discretion to decide this; that as part of my authority to try to craft a schedule and a set of discovery obligations and understandings, I have the authority to manage it in

whatever way seems the most likely to be efficient.

You cite cases that show where a judge has called that tie --

MR. BLATCHLEY: Right.

THE COURT: -- in favor of requiring production. They cite cases where a judge has called that in the opposite.

I think everybody would probably agree, although I'll certainly give the defendants the right to quibble, but that I have the authority to do it. I'm trying to figure out the extent to which it makes sense.

MR. BLATCHLEY: Sure. And I'll tell you why it makes sense here. The attorney general allegation -- the discovery in that case is directly relevant to core things that we must prove in this case. It was cited by Judge Davis in five separate parts of his opinion. It's relevant to the defendants' scienter.

The discovery in the Minnesota Attorney General's action is a core part of why we believe defendants, including, you know, CEO Glen Post, who took credit, personal credit for responding to the Minnesota Attorney General's civil investigative demand during our class period -- that becomes relevant, and it sets it apart from every other case that they might cite to you that says you don't get discovery in related litigation. I think that

that's an important point to note.

I also want to say just as a practical matter what we're asking for here is the Minnesota Attorney General's discovery. That is a universe, according to the briefs, and defendants might say something different or let me know something different today, but according to the briefs that have been filed in that case that is a universe of about 300 or so thousand pages of documents. And I just want to make clear that that, in terms of the case we're talking about in prosecuting the securities fraud claim like this one, is a very relatively modest production.

We believe that as soon as that is produced we can go through it, we can make calls, we can, you know, learn what might be helpful in terms of organizing the ESI discovery in this case, which is another related dispute we're having. We think that, you know, if there are search terms and custodians that CenturyLink has negotiated with the Minnesota Attorney General -- we don't understand why we're not being shared -- that information is not being shared with plaintiffs, because obviously it's not privileged or work product if they're sharing it with an adversary. And we can go through and with our witness interviews, the folks that we investigated, to build our complaint and to make the allegations that we made, figure out what the holes might be in terms of what is missing.

Clearly, the Minnesota Attorney General is not proving the same set of claims that we are. That is something I'm sure defendants will talk about. But they already have this repository of documents that they can literally push a button and send us tomorrow, and we can then efficiently, much more efficiently manage the discovery in this case, the documents that we might need.

And just one --

THE COURT: The ease is only one factor, though. I mean, if this were easy to send piles of irrelevant documents or of documents to which you are not entitled, the ease wouldn't make you more entitled. The fact that it's been collated in a related case doesn't make you entitled. What might make you entitled is that the topics contained in that discovery are topics that you are very likely to both request and, were there to be a kerfuffle, succeed in getting an order for the production of in this case.

So you focus a lot on the AG investigation, but you're actually asking for production from three related cases. Tell me how the derivative litigation is as robustly co-relevant.

MR. BLATCHLEY: So I think this is -- that's a good question. I think the Minnesota Attorney General investigation is undoubtedly relevant for all of the reasons I laid out, but I think with respect to the derivative

action -- again, defendants will correct me -- I believe that there has not been document discovery in that case. So I'm not sure if that's really a live issue. I think your next question might be what about the consumer case and are there differences in the consumer case.

THE COURT: Well, discovery in the consumer case was much more narrowly tailored to issues that were before, or are still, were before Judge Davis before.

MR. BLATCHLEY: Right.

THE COURT: You know, some of this has nothing to do with what you want. For instance, extensive discovery surrounding arbitration provisions probably is not your cup of tea.

MR. BLATCHLEY: Your Honor, and we recognize the differences in those issues, and, again, our focus is not on the consumer discovery. It is very much more focused on the Minnesota Attorney General discovery for that obvious reason.

But I don't know if you -- I mean, if you looked at page 2 of our Rule 26(f) report, defendants say that our case is about, you know, plaintiffs' lawyers took efforts to manufacture a case out of a consumer case. So if that's the, you know, the position defendants are going to take and they are going to try to prove that we are nothing more than a consumer case that, you know, they say failed or fails, we

should get that discovery too. And just as a matter of, just again, practicality, it's a push of a button for them to produce it.

THE COURT: So it's your position that everything related to the attorney general litigation about, you know, alleged cramming, alleged practices that, you know, could arguably constitute misrepresenting services provided or bills to be submitted, alleged mishandling of consumer complaints on a somewhat systemic level, that those are all exactly things that you need to prove in order to establish that publicly-made comments about the success of the defendants were false?

MR. BLATCHLEY: Your Honor, I don't --

THE COURT: Or misleading?

MR. BLATCHLEY: Yes, false and misleading. Your Honor, I'm not -- I want to make sure I'm not -- I'm understanding your question correctly.

THE COURT: Well, it was inartfully phrased, so good luck.

MR. BLATCHLEY: I would say I am positive defendants are going to say later in this case that it is certainly my obligation to prove all of the things that you just mentioned in order for me to prevail at class certification, at summary judgment, at trial. I guarantee they will make the statement that you just made about my

obligations.

Again, what I have to do is prove that the defendants made false and materially misleading statements with scienter. I think the discovery in the Minnesota Attorney General's action goes a long way in helping us do that, but, again, I haven't seen that discovery and I can't make that judgment call as we sit here today.

I do know that there is no burden whatsoever in defendants producing it.

THE COURT: Yes, touch of a button. Got that. Okay. Thank you. Can you grab a seat? I think I'm going to go back and forth on the individual issues, unless that gets dizzying, just to keep things focused.

MR. BLATCHLEY: Sure.

THE COURT: All right. Your turn.

MR. GIBBS: Thank you, Your Honor. Again, Pat Gibbs from Cooley for the defendants.

Let me first address the push of the button, which I've read and heard more times than I can count.

It is true, as a technological matter, we can copy an electronic data set and we can produce it. That does not define the scope of the burden that we would incur by virtue of producing wholesale the entire attorney general litigation production in this case.

As the court may have noticed, I don't have the

same teams of lawyers working across all these different cases. We have different lawyers with different areas of expertise. I have a team of securities litigators. Those securities litigators have not poured through the 300,000-plus documents that have been produced in the Minnesota AG case. If I produce them to plaintiffs' counsel in this case, I have to have that team of lawyers pour over that 300,000-plus pages of documents. That is an enormous expense and an enormous burden, and it's not justified by anything that plaintiffs' counsel have said so far.

THE COURT: Okay. His arguments would be, one, they're obviously relevant because the degree of things that need to be proven with respect to the Minnesota Attorney General case overlap with at least part of what the defendants need to prove too.

The fact that you and your team have yet to review them all, although I note some overlap of counsel, is less relevant than the fact that they've already been screened for privilege or, you know, highly confidential work product type material and, therefore, that need doesn't arise.

Help me understand what it is you would be doing when you review all 300 before you sit -- hit send, other than trying not to hit send.

MR. GIBBS: Well, I'm not saying I would necessarily have to do it before I hit send, but I'm saying

in order to defend the case I can't have a team of lawyers litigating a securities case that's turned over 300,000 pages of documents to plaintiffs' counsel --

THE COURT: Absolutely. That's true.

MR. GIBBS: -- that my team hasn't looked at.

THE COURT: That's true.

MR. GIBBS: So it's not pre-production. It's just that it adds it to the body of documents that my team has to review and absorb for purposes of defending this case, which we don't have to do just because it's been produced in the Minnesota AG case.

To the point about the substantive overlap, with all due respect, plaintiffs' counsel has never once articulated any reason why every single document produced in the Minnesota AG case is even remotely relevant or within the scope of discovery in this case.

THE COURT: Give me an example of a set that isn't. His point is he hasn't seen that discovery. I've been trying to imagine the sorts of discovery in this data set that -- it was easy for me to imagine in the consumer litigation, things that wouldn't be relevant that would make the touch of a button arguably over-inclusive. Help me understand what that might be here.

MR. GIBBS: I can come up with a number of examples. First of all, the plaintiffs here are claiming

that CenturyLink engaged in systematic overbilling of customers in a way that materially inflated its financial results. The Minnesota AG is not limited to looking at complaints about billing practices that necessarily inflated the company's revenues at all, much less did so on such a scale that they materially inflated the company's reported revenue. So the Minnesota AG may be looking at all sorts of individual customer billing complaints, some of which will have nothing to do with overbilling, but the Minnesota AG might still think are relevant to whether there's been some kind of consumer fraud on an individual Minnesota consumer.

THE COURT: Well, wouldn't it be true that if there is an allegation that, hypothetically speaking, shenanigans were taking place with respect to individual consumers that didn't necessarily put more money in the pocket of the defendants, but otherwise, you know, kept in abeyance consumer dissatisfaction or avoided having customers go somewhere else, that those serve the same purpose of proving up that later statements made about the financial robustness of the defendants were false?

MR. GIBBS: I don't think that's an allegation that's been made here.

THE COURT: Okay.

MR. GIBBS: That's not my understanding of the complaint that Judge Davis reviewed for purposes of denying

our motion to dismiss. I think the -- the plaintiffs' complaint in this case by necessity identifies some very specific billing practices that they call cramming that they claim inflated the company's revenues. And that's what Judge Davis relied upon in denying our motion to dismiss.

The Minnesota AG's lawsuit, its discovery, isn't anywhere near as limited in terms of the types of billing issues that are relevant to the Minnesota AG. It's a consumer protection statute. There could be violations that have nothing to do with extra revenue from the customer in any way.

THE COURT: Would you say that the complaint in the Minnesota AG case is the best way to discern the existence or absence of overlap factually?

MR. GIBBS: I don't know that I know for sure what's the best way to determine the factual overlap.

THE COURT: I mean, right now I just have to kind of take your word for it --

MR. GIBBS: I understand.

THE COURT: -- like they haven't seen it.

MR. GIBBS: I understand, Your Honor, although I think the nature of the claims -- so this goes in part to your question -- the nature of the claims itself is sufficiently different that I think there is little reason to believe the overlap is anywhere near as complete as

plaintiffs' counsel makes it sound.

And I don't understand why we're spending all this time talking and arguing about a wholesale production of a large volume of documents from another case, when we could just be talking about what's actually relevant to this case.

It may very well be that some of the documents we've produced to the Minnesota AG are discoverable here, but I don't know why it's more efficient to have a big fight over producing all of them as opposed to just doing this the way we normally do it, which is they make requests about their case, we object and respond, we meet and confer, and we produce documents that are agreed upon or that are ordered by the court as relevant to this case. It's not that hard. It doesn't need to be this complicated.

THE COURT: Well, they're not trying to make it complicated. They're trying to make it easier. They're trying to right out of the gate get 300,000 documents.

MR. GIBBS: I understand.

THE COURT: Right now you're proposing a system that I can't even say the date on which you will hit send. It seems like the system you all are proposing requires them to serve discovery requests, you to mull them over, you to serve responses and in some period of time later, which I think might be 60 days, that you begin rolling production to end at an unknown time in the future. But also I think

there's a caveat in there that the 60 days could be after the disputes are agreed upon or I've resolved them?

MR. GIBBS: I'm not sure that's quite right, Your Honor, but there's no --

THE COURT: Okay. But it seems like we're talking pretty far in the future.

MR. GIBBS: Well, to be fair, Your Honor, the reason I'm doing that is because I now have a set of document requests from them. It's over a hundred document requests. Some of them are breathtakingly broad. And without knowing for sure how narrow they're going to get, I don't want to commit to something that I can't actually accomplish. If we can narrow the scope, we can shorten the deadlines. I don't have a problem with being under a deadline. I'm not trying to kick out the time period for no reason, but I am trying to rationalize it and focus it on what's relevant to this case.

And in that regard, plaintiffs' counsel just says over and over again indisputably relevant. Now, the only thing he's ever said specific to that is there are some things about the Minnesota AG case that are referenced in his complaint and Judge Davis cited those allegations in his ruling. Fair enough. If they want to ask for documents specific to those allegations, we can talk about that and there's probably some documents we could produce in fairly

short order that would be responsive to those types of document requests. But the fact that they have taken some allegations made by the Minnesota AG and dropped them into the complaint here doesn't make every scrap of discovery produced in the Minnesota AG case suddenly relevant to this case.

Counsel referenced there are 3.5 million customer allegations. It's not true. It is based on a document that is -- whose contents and meaning are hotly disputed in the Minnesota AG case; but if they want to see that document, we can produce that document. That doesn't require us to produce wholesale 300,000-plus documents that have all been produced to the Minnesota AG. It's a pretty simple way to get at the things that are actually relevant to this case, and it doesn't require wholesale reproduction of something from another case.

I understand the court's concern about timing. And as I said, as long as we're talking about a reasonable scope, we can set deadlines. I don't have a problem with deadlines, but what I have a problem with is a scope that appears to me to be virtually unlimited.

THE COURT: So 300,000 documents in a case of this size isn't really virtually unlimited. I mean --

MR. GIBBS: I'm talking about the requests, Your Honor. I agree 300,000 by itself. But the point is -- the

court's first question I think is very important.

THE COURT: How is this functionally going to narrow future requests. It's just going to give you a giant pool from which to draw in the beginning.

MR. GIBBS: Correct. I -- you know, we've all been around the block. I don't think that them getting the 300-plus-thousand documents is going to take a single custodian off their custodian list. I don't think it's going to take a single search term off their list of required search terms. I don't think it's going to cause them to withdraw any of the one-hundred-plus requests with subparts that they've already made. It's just going to be an avenue to more discovery. And I understand why they want it. I don't blame them, but it imposes a significant burden on us. And I just don't think that's the most efficient way to get at whatever documents are actually relevant to the case they're trying to prove here.

THE COURT: How come you couldn't achieve the economy of scale by bringing a team member from the other litigation who's familiar with the 300,000 documents?

MR. GIBBS: A few reasons. First of all, there's simple bandwidth concerns. The Minnesota AG case is barrelling towards, I think, a February trial date. Believe me, the first thing I asked for when we got the ruling denying our motion to dismiss was how many of those people

can I get on my team. The answer is zero. They are running at a ridiculous pace. They have been briefing summary judgment, and now they're racing to trial. If I could do it, I would. I can't. I mean, I certainly don't want my securities lawyers to have to reinvent the wheel, but they are fully engaged at a pace that I just -- I can't add to that.

THE COURT: Okay. Thank you. You can be seated.

MR. GIBBS: Thank you.

THE COURT: I will give you the last word, Mr. Blatchley. Is it Blatchley?

MR. BLATCHLEY: Blatchley.

THE COURT: Blatchley. I got it right. And then I start to doubt myself, so --

MR. BLATCHLEY: Thank you, Your Honor. Just a couple quick points.

And I just want to make sure, because I've never heard an argument quite like the one we just heard from defendants' counsel about burden. We're talking about Rule 34. We're talking about producing documents, not, you know, what -- that the burden in producing documents, not what might ultimately be at issue in the case, what the factors are of relevance and proportionality. This is a --

THE COURT: Well, it has to do with proportionality. His point is if he has to review 300,000

documents that are in your hands for harvesting and, you know, responding to summary judgment motions or filing affirmative summary judgment motions or your class cert motion, you know, he wouldn't be representing his clients if he didn't know what was in that pool. So proportionality includes -- it cannot be just the hit of a button, otherwise, you know, you would get everything, and that isn't clearly the rule.

MR. BLATCHLEY: But I think in this context, Your Honor, when we're talking about a defendant who has the team of attorneys who has reviewed those materials, it's not a very persuasive argument to say, oh, we might have to review them again because we're not willing to shift litigation associates around. I think it's a -- if the documents are relevant to this case, they will know about them. They will know about them regardless of whether they're in the attorney general production or we get them from some other avenue.

THE COURT: And if the documents aren't relevant to the case, why should you have them?

MR. BLATCHLEY: Exactly, Your Honor. That's what the problem is here. I want to go back to quickly what Mr. Gibbs had said about that point. He said they're not relevant because the attorney general can look at a number of things. You did not hear Mr. Gibbs say that this is what

he has looked at and this is what the production is or this is what is at issue in that lawsuit.

My understanding, again, maybe defense will correct me, but the two central things that I understand them with the attorney general are affirmatively moving for summary judgment on has to do with kind of two issues, and those two issues are directly relevant to what we have to prove in our case. One is this -- again, this goes back to the documents that we've been discussing about the internal audits and the $3.5 million number of customers overbilled, that has to do with closers that were offered to customers at various times during calls that were not honored. And the second is customers who were promised fixed rates, but were actually charged more, including in terms of the cost recovery fee or some other fee that it's called. Those are two things that are at the core of our case.

They also talk about -- in our complaint we've alleged a practice by defendants, by CenturyLink in protecting revenue. That's the term that has been used in the documents citing the Minnesota Attorney General action. Those documents have to do with numerous allegations in our complaint where we say that CenturyLink set up a process that was intentionally designed to keep as much of the overcharges as possible. I understand that there are policy documents at issue in the Minnesota Attorney General action

that actually bear that out, and that is one of the things that -- there's undoubtedly core critical relevant information, that we might get some documents that don't really matter all that much to the litigants here is in no way a justification to start picking out and introducing the tremendous burden of going a document by document kind of process when you can --

THE COURT: I don't mean to be snide, but one of my big concerns here is I don't think this is going to change what you all do at all. And I'm not criticizing you for that. You will begin with this as, you know, valuable discovery in the bank. You haven't expressed that you will reduce the number of documents requests that you are going to serve or that you will, you know, withdraw other discovery requests. It gives you a whole bunch of stuff right out of the gate, but I really don't see how it actually reduces any of what you are planning to do.

MR. BLATCHLEY: So let me just address that in the most kind of practical terms I can think of at the moment, although I am sure there are other examples.

One of the arguments we've been having with defendants' counsel is their unwillingness to share with us search terms and other ESI parameters. This is actually in a case; a court recently cited this very issue that we're having. It's the *In Re Broiler Chicken Antitrust*

Litigation. I'm happy to give you the cite. The court says when you --

THE COURT: Go ahead and give me the cite.

MR. BLATCHLEY: Sorry. It's 2017 Westlaw, WL, 4417447.

What the court said there in ordering a production of, you know, documents that had previously been produced to the Florida Attorney General in that case was that, listen, this is going to be a long discovery road and what we can do by streamlining and making discovery more expeditious is to give plaintiffs those documents. In doing so, they will begin to see the kind of language that's used in defendants' own documents. They will be able to identify custodians that might be important. They will be able to help defendants negotiate search terms that is fair to both sides and actually identify the documents that we are going to need to prove our case.

And what I'm worried about and what the concern is, is if we're doing this kind of one-sided "I'll tell you the search terms I used after I run the searches process," is that we're going to, of course, say, well, you didn't run the right ones; and then we're doing the search again; then we're before Your Honor again saying that this wasn't good enough, this wasn't sufficient.

By giving us that discovery now, we can take a

look at that and gauge in a cooperative effort with defendants in figuring out what the right search terms, ESI protocol and other parameters are going to be in this case. I see it as a very beneficial way to move this forward, particularly given the core relevance of the majority of the documents based, again, without having seen them, on what the attorney general is actually trying to prove in that case.

THE COURT: So help me with a hypothetical. Let's say you have a document request that you've already served seeking something specific with respect to consumer complaints. Are you going to withdraw that document request if you get the discovery produced in the attorney general case?

MR. BLATCHLEY: Well, I don't think -- I'm just trying to take the hypothetical -- I don't think our documents requests are that broad. We're happy to share them with you and talk about that, but --

THE COURT: Well, give me an example of one that is better at my analogy than the one I just made up.

MR. BLATCHLEY: Yeah. So -- so just taking -- complaints related to I guess what would be Minnesota. I think that would be a document request that we could think about modifying in response to, you know, if we had gotten production.

But I think what is -- I think what we're kind of missing in terms of kind of going back and forth on the document-by-document question -- and the complaint, we don't have a hundred requests. We have fifty. But I think the issue that we're missing here is that the way discovery works in cases nowadays with ESI, the real work is in figuring out the search terms.

THE COURT: I understand. We're going to talk about that in a moment. I share your skepticism about the proposal the defendants have made, but that doesn't to me mean that this is the solution.

MR. BLATCHLEY: And all of which is to say that getting that part of the case right, getting the right searches conducted, the right custodians done, is going to be a lot more productive in terms of actually getting the right documents produced in this case than going by a document, you know, individual document requests issue. They're going to say, well, we're only going to give you a narrow slice of whatever your document request is seeking. We're going to meet and confer with them, and we're going to come up with the right boundaries. But the real work in identifying what those documents actually are are search terms, custodians and date ranges.

THE COURT: Okay. Thank you.

All right. Let's pivot to substantial completion,

and let's talk about the -- and let's start with the defendants, if you don't mind, unless this is a different one of your team members.

MR. GIBBS: No. This is me.

THE COURT: And I also want to talk about the search terms. Is this also you?

MR. GIBBS: Yes, Your Honor.

THE COURT: Okay. I have to confess I don't really understand your proposal. Is it true that you do not want production to start until disagreements about any objections have been resolved?

MR. GIBBS: That's -- that's not how I understand what we're proposing to do, but let me -- let me quickly check the language.

THE COURT: Okay. Good. I have to confess that I'm having a difficult time discerning exactly what you see happening from your proposal, but that may well just be that I don't understand the language that you are proposing.

MR. GIBBS: Would the court like me to refer to the report or --

THE COURT: Whatever works. I just want to know what you're advocating for, so I can find out whether I agree or not.

MR. GIBBS: I think part of the problem here is that the two parties are starting so far apart, I'm not sure

we ever really got the issues to ground. I mean, the plaintiffs' position was it should start immediately with full production from all these other cases and, by the way, substantial completion by December 13th of this year. You know, plus, you've seen the scope of the document requests.

And so I -- I will admit that in the course of the discussions a lot of what we're trying to do is make sure that we don't end up getting jammed with a schedule that's just not feasible.

So there's nothing in my view that's written in stone about -- about where we are on the proposals. I just think the parties, you know, the discussions stop like this.

THE COURT: Well, for instance, you have a bunch of document requests sitting on your desk to which you are supposed to respond by Friday; is that right?

MR. GIBBS: Right.

THE COURT: And tell me what it is that you envision happening on Friday and after Friday.

MR. GIBBS: Well, what I would envision happening on Friday is we will serve our responses and objections. I suspect I will get an email from Mr. Blatchley about five seconds later asking for a time to meet and confer, and we will set a time to meet and confer. And I would expect that we would start a discussion, usually on a request-by-request basis, about exactly the items that he's mentioned,

custodians, search terms, that sort of thing.

But I do think, again, part of the difficulty here is plaintiffs are proposing that we start negotiating search terms within seven days after we've served responses and objections. Given the nature of the requests that we've received, I'm not sure that process makes sense because the first question we're going to have is, Do we even have agreement as to the scope of documents that should be produced, much less the mechanics of how we do it.

And so I think our concern about his proposal was we're going to start kicking search terms back and forth when we're a hundred miles apart, in terms of just the scope of what should be produced in response to each request. Now, I mean, that's fine, I guess. It doesn't make much sense to us if the parties are still debating between Point A and Point B about what's the substance of what we will agree to produce.

THE COURT: Okay. Let's say there's ten document requests. You file pages of generic objections as to all ten and indicate a willingness to provide certain documents with respect to each. I hope that's what we see Friday?

MR. GIBBS: I would expect so, yes.

THE COURT: Okay. They -- you agree to meet and confer. You meet and confer right away. Some of these things are not controversial, and you can talk about

custodians and search terms.

MR. GIBBS: Okay. That's fine. I would agree with that.

THE COURT: So I perceive you as saying that until all the issues are resolved you don't want to negotiate search terms, but what I hear you -- or what I perceive you -- your position in writing. What I hear you saying is that talking about search terms can happen all along as to things about which there's no dispute, but we all have to recognize that it's an iterative process that's going to have multiple waves and that there might be some issues that the parties are so far apart on that it is not practical to talk about search terms.

MR. GIBBS: That is what I'm saying.

Now, I think, to your point about the iterative process, I think that's very important because some of the -- for some of the requests the custodians will overlap. All right. And so we'll be talking about search term parameters for the same set of custodians, some overlapping custodians for different requests. Some may be noncontroversial, and maybe we'll agree on search terms. Others we're still talking about scope and -- and we'll get to search terms when it makes sense.

Part of that process usually involves testing the search terms against a set of documents, and so I'm a little

bit worried about locking in for some without understanding it all.

But conceptually I don't have any problem with saying, you know, to the extent we can agree as to this particular document request on a reasonable scope of production, I don't have a problem discussing right then how we would go about finding them with search terms, understanding that it is an iterative process.

THE COURT: One of the things that I read some of the materials to suggest is that you think that the appropriate time for the plaintiffs to chime in about your search terms is after you've already begun the production and they get to see whether it's satisfactory or not. I'm not exactly hearing you draw that clear of a hurdle now.

MR. GIBBS: No, I wouldn't -- I wouldn't insist on that hurdle. I'm fine having a conversation with them. I'm fine with testing them and telling them what the results are.

And we've often had discussions like, okay, I ran the search terms we talked about; some of them are producing hundreds of thousands of hits, so that's too broad; I want to take that one off; do you agree? We can have that conversation.

THE COURT: And presumably you aren't taking the position that you don't have to disclose your search terms?

MR. GIBBS: No, no.

THE COURT: Okay. Okay. Talk to me about timing for substantial production. Let's assume that I don't require you to disclose everything that's been produced -- let me ask you about the Minnesota Attorney General production.

MR. GIBBS: Yes.

THE COURT: It's presumably Bates numbered in a way that reflects that it was produced in that case, right?

MR. GIBBS: Yes.

THE COURT: If you produce the same documents in this case, will you keep those Bates numbers or are you going to act as though they're being born for the very first time? Are you going to take their document requests and go into your clients', you know, databases and look for them anew, even though they might have already been culled and put into that document production?

MR. GIBBS: I don't have a fixed view as between those two things. I want to do whatever is most cost-efficient and effective for my client. I could imagine a circumstance where it makes more sense to use the Minnesota Attorney General production as its own database to search for production in this case. And so, in other words, I don't have a fixed view as to whether we should just pretend the Minnesota AG production doesn't exist. In fact,

I don't think we have to do that.

THE COURT: Well, it can't be. I mean, if that's your position, then your claim that it's inefficient to produce it doesn't ring true, because you'd have to be reexamining 300 -- let's assume only a hundred thousand of these documents overlap. You'd have to be reexamining all those hundred thousand, finding them, reexamining them for privilege, reexamining them for, you know, highly confidential work product. It can't be that it's equally plausible that you would start from scratch, right, for that reason? I mean, presumably, if nothing else is true about the 300,000, they've been screened for privilege.

MR. GIBBS: Yes, they have.

THE COURT: And they've been screened for highly, you know, secretive -- secret sauce recipes or whatever else might constitute the ultra-confidential documents in a case like this.

MR. GIBBS: Yes. I understand. I would need to -- I just -- I'm not trying to be difficult. I'm just -- I understand the court's point that it seems likely that to the extent we think there are responsive documents in the Minnesota AG production, it probably makes sense to start there. My only hesitation on that, actually, is I want to make sure there's nothing that limited the input into that database that would somehow have me leaving out something

I've said I'm going to produce, actually. I just think the devil might be in the details.

THE COURT: Yeah.

MR. GIBBS: But I understand the court's point. I'm not -- I'm not looking to use documents that require privilege screening when I could use a set of documents that don't. I completely agree. That makes no sense, and I wouldn't do that.

THE COURT: So your point is kind of that the Minnesota Attorney General production could be both over and under-inclusive.

MR. GIBBS: Yes.

THE COURT: Okay. So let's imagine you get a document request -- let's imagine that I don't order production of the Minnesota Attorney General production. You are following a more traditional path of document request, response. Is it your intention to begin rolling production or is it your intention to wait until, you know, some quotient of disagreements has been resolved to begin compiling production? What's your plan?

MR. GIBBS: We can -- we can begin rolling production. I don't have any objection to that.

THE COURT: Okay.

MR. GIBBS: And, for example, counsel mentioned that he understands there have been a number of policy type

of documents produced in the Minnesota AG case. That's true. I'm not sure they're all relevant here, but as a category of documents that's not a particularly controversial one. That seems like the type of document I would expect we could produce pretty quickly.

THE COURT: Okay. How many document requests do you believe the other side has served already?

MR. GIBBS: I believe they are numbered 48, but almost all of them have substantial numbers of subparts. So when you count up all the subparts, it's over a hundred. That's why we are using that number.

THE COURT: Okay. And when are you advocating, if I do not grant the Minnesota Attorney General production request, when are you advocating for the substantial production deadline? Let me just say it can't be at the very end because that's how, you know, horrible things happen.

MR. GIBBS: I completely understand. No. I believe the date we had proposed was in April, with the idea that fact discovery would continue for another six months or so. There's a table at pages 25 and 26 of the joint report. Let me see if I can find it.

THE COURT: I've got it. Yeah, yeah, yeah. I've got it. I'd forgotten that you had a date in there. I apologize. I think it is April.

MR. GIBBS: Yes. It's, actually, it's early in the table.

THE COURT: Or in the alternative April 30th.

MR. GIBBS: Correct.

THE COURT: So you're -- you're okay -- okay. Thank you. I think we've talked about these issues. Anything else you want to add before I turn to opposing counsel?

MR. GIBBS: No, Your Honor.

THE COURT: Okay. All right. Your turn.

So I share opposing counsel's observation that in some ways I think we failed to completely have a meeting of the minds, because you all were talking about very different paradigms.

It appears that the position that the defendants are taking are that they will respond to document requests with undoubtedly piles of objections, but some agreement that you will engage in a meet and confer; the easy stuff will begin rolling production right away; there will be ongoing conversations about search terms that are mutual; they will tell you what they are using; you will suggest things that can be added; as always, there will be testing; if ones are proven to be unworkable, they will come back; if you can't agree on the importance of a particular custodian or term, you bring those to me for my resolution; and that

they will get a substantial production completed by April 30th. Tell me what is unworkable about that plan. I'm -- I'm less interested in whether it matches what you thought was their original plan and more interested in trying to find common ground.

MR. BLATCHLEY: Got it. Okay. So if I may just quickly, that's not what was written in their proposal, but I --

THE COURT: Yes, I knew that you would be unable to resist doing exactly what I told you not to do.

MR. BLATCHLEY: I'm sorry. I'm sorry.

THE COURT: That's all right. I wouldn't either if I was in your shoes. Yes.

MR. BLATCHLEY: I appreciate that.

So I think the problems -- let me just highlight one big problem I think we have with that proposal, although it is a much more sensible proposal from plaintiffs' perspective to actually talk about search terms, custodians and the like, where we can agree on the scope of document production. Again, it's a very -- I'm very concerned about that given where we are on our relative positions on relevance and the rest.

So one of the things I would like to highlight that I think is a problem with Mr. Gibbs' deadline, a substantial completion deadline of April 30th, it has to do

with class certification.

THE COURT: I wanted to talk to you all about --

MR. BLATCHLEY: Yeah.

THE COURT: -- the way these work together. Finish your thought. I'm sorry to interrupt.

MR. BLATCHLEY: So the thought that -- you know, we had pushed for a very, you know, an early substantial completion deadline, knowing that deadlines help motivate parties to negotiate and impose discipline and help us get that discovery worked out as soon as we can. We think that's important.

Defendants' position is to -- again, now that they're saying April 30th is an okay date, that is after class certification briefing is completed. And in our negotiations on the schedule, defendants proposed something that I have actually never seen before, which is a class certification schedule that has interim deadlines between --

THE COURT: This is the first time I saw this as well.

MR. BLATCHLEY: Yeah.

THE COURT: Just to be very transparent, I petitioned some colleagues. No one's heard of this.

MR. BLATCHLEY: Yeah.

THE COURT: It's interesting, but scary. I can see challenges with it; I can see appeals to it. And I do

want to talk about this as its own sort of discussion point. Go ahead. Tell me --

MR. BLATCHLEY: So I was just going to say the problem with their date, for example, is that it -- there's a date. And I'm not sure what I -- I entirely understand what defendants mean by their class certification schedule, but it sounds like they serve --

THE COURT: But you kind of agreed to this woven --

MR. BLATCHLEY: We did. And I will tell you just, if I may, really briefly why --

THE COURT: Sure, we might as well talk about this now as well.

MR. BLATCHLEY: -- why we did that. The problem -- it seems that defendants say, okay, you have to produce your documents by a deadline right after we file our class certification motion. And we received defendants' document requests today. I've got -- imagine they believe all of them relate to class certification, putting a substantial completion date for plaintiffs that is about four or five months before defendants' substantial completion date. It really ties and is really one-sided in defendants' favor in that regard, again, if I'm understanding the proposal correctly.

THE COURT: Show me where on -- and I'm just

working off the summary chart on page 25 -- show me where your understanding of the deadline they put on your obligation to produce things related to class cert is.

MR. BLATCHLEY: So, yeah, I think you actually have to go a page earlier.

THE COURT: Okay.

MR. BLATCHLEY: There is -- page 23(3)(i)(ii).

THE COURT: I see it here.

MR. BLATCHLEY: Document production related, blah, blah, blah, must be there. And it's, again, a later -- I think that's the only date that's pertinent to what we're talking about, but they have -- you know, it's a document deadline, then a deposition deadline.

And just so you understand why we agreed to this, what I -- I don't like defendants' proposal. I think it doesn't make any sense. I think, you know, the parties are able to get the discovery they need whether it's related to class certification. I don't think you can break out class certification versus other merits discovery. I think that has repeatedly been recognized by courts as something that doesn't make sense. But I think they were pushing it because there was a concern that they would want to depose our expert and not have what they need to depose the expert by the time that they had to -- to file their opposition. So I think that that's where that's coming from.

We were -- we were reluctant, but willing to engage, again, because we're trying to get to the answer, you know, an agreeable answer in good faith here, although I think it doesn't make sense, certainly with respect to document production and substantial completion. Again, we had that deadline almost immediately after we filed our opening motion for class certification. We have document requests to defendants that we believe will be relevant to class certification. And if defendants aren't producing them until after class certification is over --

THE COURT: But their proposal -- their proposal isn't that this is unilateral. Their proposal is that document production related to class certification must be completed by January 6th. I guess their point is they don't have to give you your stuff until you've already filed your opening brief?

MR. BLATCHLEY: So I think that that's what that means. I didn't read defendants' proposal, at least in our discussions, as being -- I read this as being related to what our obligation would be to produce.

THE COURT: To them.

MR. BLATCHLEY: What they would use to oppose the motion as opposed to what they might have to produce to us in terms of, you know, documents pertaining to whatever it might be, damages, loss causation, market -- whatever, you

know, those issues might be.

THE COURT: Okay. Let's put aside for a moment, although I recognize this is an illusory thing to say, but the question of the -- the unique woven class cert schedule. Do you believe that the substantial completion date has to precede your opening filing?

MR. BLATCHLEY: Your Honor, I don't think we do. We would like to get documents, as many as we can, before the opening filing, but we don't believe that it's necessary to be substantially complete before then. We think we will have enough with what our experts have been able to get from something like third parties and from, you know, the material that we already have to do the opening motion and to get the documents that we believe will be produced by that time.

THE COURT: You want substantial completion to be done before your reply filing?

MR. BLATCHLEY: Yes, we want a substantial completion deadline -- again, it's in the chart. I believe it's on December 12th?

THE COURT: But that, yeah, that's if you get your date. If we had to make some adjustments, could we adjust -- you know, I'll be really candid.

MR. BLATCHLEY: Sure.

THE COURT: I think the full substantial

production by December 13th seems ambitious.

I hear an audible snark coming from the defendants' table.

But it seems unrealistic. I'm cautiously optimistic that we have seen the end of the list of issues about which you can't agree and everything else will be complete unanimity moving forward; but even if that were the case, this is going to be a very large production.

So given that I don't think December 13th is a realistic date, if we were to push things back in the substantial production, how much time do you -- or substantial completion of document production, how much time do you want between the substantial completion deadline and your reply?

MR. BLATCHLEY: I assume if we're keeping -- I think it kind of depends. I'm just trying to, you know, if articulating --

THE COURT: You gave yourself just under two months in this.

MR. BLATCHLEY: Yeah, I think we have a 45-ish opening opposition reply in our schedule. I hope that's accurate.

THE COURT: Something like that.

MR. BLATCHLEY: I think we would -- I think we would want what we said in our -- in the proposal. I think

that that timing is generally fine with, give or take, 60 days before we file our reply. Does that make --

THE COURT: So if you can have those documents 45 to 60 days before your reply, that's what you want. And if we have to adjust the -- this somewhat unusual design backward in order to accommodate the substantial production date, you are okay with it replicating its current pattern as long as you have roughly 45 or 60 days between the substantial completion deadline and your reply being due? And you are okay with not having substantial completion ahead of your initial motion for class cert filing as long as there's a good faith on the part of the defendants to try to get you the stuff you absolutely need?

MR. BLATCHLEY: Correct.

THE COURT: Okay. Is there any -- I confess that this is a new model to me, but that doesn't mean it's not a good model, and I have a feeling I'm about to be persuaded why it's awesome. But is there anything else about this kind of merged class cert discovery briefing schedule that you don't like, other than just its relative lack of familiarity?

MR. BLATCHLEY: The -- so I don't like the fact that we're breaking up or trying to break up class certification document production in this matter. I think that that's something that does not make any sense.

THE COURT: Well, that happens quite a bit. I mean, unless you push your class certification deadline all the way back to your summary judgment deadline, it happens quite a bit that you, at some midstream point, you file your class cert motion, right, I mean, and that's inherent in either version of this path that you've set, unless what you are really advocating for is pushing class cert to the very end.

MR. BLATCHLEY: No, I'm not, Your Honor, at all. We think we need to get the class certification motion, and Rule 23 is crystal clear in this regard, as early as practical.

And, again, just for context, the reason we were willing to agree to this weird schedule, defendants originally proposed having a year-long class certification, nearly a year-long class certification briefing process, which we, you know, we couldn't, we thought that was unrealistic and against Rule 23; but in order to accommodate the concern about, I guess, expert depositions and being jammed, we thought that this was a sensible compromise just on that piece. So --

THE COURT: But your agreement to the urgency of this briefing universe assumes your victory on the substantial completion deadline; and if you can't have that, then we got to nudge it backwards some.

MR. BLATCHLEY: Nudging the class certification schedule backward?

THE COURT: Yes.

MR. BLATCHLEY: Yes, I think that that -- I think that that would be -- I don't love it, but I can see there might be -- again, I don't think there's dramatic moves from where we are on those dates that we proposed. I don't think it makes sense. I think, again, that while defendants might have, you know, some arguments about why they think document discovery should be an extraordinary long time period here, I just want to remind the court that this is a company that's done its own internal investigation. It told investors it reviewed 10 million documents in the course of four months. They can do the document discovery. When it suits their needs to be timely, they can do it.

THE COURT: Okay. Thank you.

All right. Tell me what your thoughts are about your creative pitch for kind of an interwoven schedule with respect to class cert, Mr. Gibbs, and also tell me how soon you could live with the substantial production deadline and what changes, if any, you think that would necessitate making to the proposed schedule.

MR. GIBBS: I'd be happy to, Your Honor.

So I don't actually think it's that unusual. I don't know whether I've done it just like this in a

securities class action. I've certainly done interim discovery deadlines like that in other class actions.

THE COURT: Oh, I've seen interim discovery deadlines. I haven't seen the weaving in with class -- with expert work.

MR. GIBBS: Well, and so the reason for that is because of developments in the case law in class certification in securities cases in recent years. Expert testimony, in my view, has become considerably more important. In fact, it's usually the only thing we're really arguing about.

And so what I'm trying to ensure is that I get a fair shot at taking the deposition of whoever they propose is the lead plaintiff with documents and a fair shot at deposing whatever experts they put forward in support of their motion for class certification. I assume if we put any experts forward in our opposition that they will want the same thing in return.

THE COURT: For their reply.

MR. GIBBS: So that's -- that's why we've done it. I mean, the class certification process has become very expert dependent. I will be shocked if they don't have an expert offering a report in support of their motion. And I just want a fair shot to depose them. And I've described for counsel a recent situation where we agreed to a briefing

schedule without any parameters or deadlines for these types of expert matters, and I was told, great, our expert is available seven days before your brief is due, have fun, good luck. And, you know, I don't want to be in that position again.

THE COURT: Well, I've been educated about this, because I think in my -- in my experience, although I've had several class cases before me, an increasing number, I haven't had a securities case and I haven't seen the centrality of the expert work. And I understand that you can't quite be on notice about the universe that they are going to rely upon until you get their brief, which is what triggers your expert work, which is what's going to trigger their expert work and their reply.

MR. GIBBS: That's exactly right.

THE COURT: So given that, and given the fact that although they find it perhaps curious, I'm not persuaded that it doesn't make sense, but I agree with you that I think December 13th is ambitious. I agree with them that I don't think it's fair for the substantial production date to post-date their reply. So help me pick something in between.

MR. GIBBS: Well, so I personally am indifferent to when they do their class certification motion. So the only piece of that particular puzzle that I care about is

the substantial completion date.

THE COURT: Mm-hmm.

MR. GIBBS: And, you know, I can't tell you the world will end if you give me something before April 30th, but, candidly, I think that's actually fairly ambitious for a case like this.

Counsel has said, in effect, the 300,000-plus documents that they want from the Minnesota AG case is but a drop in the bucket for this case.

THE COURT: I don't know if they've said that. They -- they haven't agreed that it's coextensive with everything they might need.

MR. GIBBS: He's suggested that's a --

THE COURT: And it's not, because obviously --

MR. GIBBS: -- relatively small production for a case like this, which implies the case as a whole will be much larger. You know, I don't know what it's ultimately going to be. I'm sure that we're going to disagree about what it should be. I just -- I don't think there's some massive difference to the plaintiffs whether it's substantial completion on April 30th versus February 28th or March 15th. It could make a pretty big difference at my end in terms of, you know, whether I'm killing my associates or not.

THE COURT: Mm-hmm. Don't do that.

MR. GIBBS: I don't want to do that.

THE COURT: Okay. Thank you.

MR. GIBBS: Thank you, Your Honor.

THE COURT: Let's go on to our next of many items.

Okay. Mr. Blatchley, can you come back? Sorry. You are going to get your steps in, although at any point you could just hand the baton to one of your able colleagues.

A little trouble that right out of the gate your 50 is their 84 on document requests.

MR. BLATCHLEY: Oh. Oh, sorry, Your Honor.

THE COURT: Hopefully, there's an answer that you both agree on about how many document requests you've actually served.

MR. BLATCHLEY: Again, it was -- our requests are numbered 1 through 48. There are subparts. I am sure they consider those to be unique requests. We consider them the same part of the request. We can come to an agreement on that --

THE COURT: Okay.

MR. BLATCHLEY: -- one way or the other.

THE COURT: Okay. Good. I don't want to have to mediate that.

So what happens if I say that you only get 100 document requests, which is what their request was? Are you

going to withdraw the requests you've served?

MR. BLATCHLEY: Again, assuming you agree that each subpart is its own request, I think what we would -- if you were to rule that, I think we would address that with defendants on the meet and confer. I think that, you know, again, we -- we didn't understand defendants to have the disagreement on the subpart on the initial requests.

THE COURT: Okay. How many requests for admission have been served already?

MR. BLATCHLEY: Zero.

THE COURT: Okay. So the only thing that's been served that has a disagreement about limits is the document requests?

MR. BLATCHLEY: I believe that's correct.

THE COURT: So I am not going to adopt a schedule with no limit on document requests. I think that that encourages discovery that's disproportionate or risks being even more disproportionate to the needs of the case. But help me guess -- help me understand what you think would be an appropriate number. It's not going to be 25.

MR. BLATCHLEY: Well, Your Honor, I think just in terms of being reasonable, considering the universe of what we had served, I think we might at some point later in the litigation require additional requests on issues that we haven't learned about yet. So we would ask that the number

be larger than what we have served to date, but it can be a number in the range of half of the amount that we've served.

THE COURT: So I -- your, at least, your goal in your opening service was to be a large, a significant chunk of the documents that you want. And then what you are looking at is clean up and additional things that you discover? It's not that this is batch one of an already planned three batches?

MR. BLATCHLEY: That is absolutely correct, Your Honor. And, again, the idea was to get discovery moving as quickly as possible and, again, with the comment that I think in these cases it's really more about the ESI discussion than it is about the requests themselves.

THE COURT: Okay. I am going to do 160 document requests. I expect you all to figure out what that means; and if you can't, bring that to me; but I have yet to have to mediate that fight, and I think that this probably shouldn't be the time that I have to decide what's a subpart and what's not a subpart. I think you guys can figure that out.

I am going to do 75 requests for admission.

Let me say that to the extent this is my decision, and I do not speak for Judge Davis, but if he suggests that you bring discovery disputes to me, I am open to a request to expand discovery limitations if there's a particular

showing for why that's necessary based on the actual facts of the case.

So I don't just want you to view that as carte blanche now. You are going to have to make a pretty darn good showing, but I am open to those requests if appropriate. I think it's better to start with some limits and try to -- try to adhere to them.

So it's going to be -- what did I just say for document requests?

MR. BLATCHLEY: 160, Your Honor.

THE COURT: Oh, good. That's what I wrote down, but I forgot to circle it.

And 75 for requests for admission.

Let's talk about the limitations on depositions. You all have proposed 250; you all have proposed 150. There's a number right between those that I am tempted by. Tell me why that's not workable. 200.

MR. BLATCHLEY: Your Honor, that -- I can get into the background of why we propose 250. They had 300 for plaintiffs' discovery in the consumer case. But if Your Honor wants to do 200, that sounds like a fine number.

THE COURT: I want to do, yeah, I want to do 200.

And, again, if there's a reason, you know, let's say you find the smoking gun witness and you need four more hours, hopefully you could stipulate to something like that;

but if you couldn't, let me know.

Anything you want to be heard on on that front, sir? I don't mean to just let him have the podium.

MR. GIBBS: No, Your Honor.

THE COURT: Okay. All right. Okay. You can be seated again, sir.

I think we've got to talk about a few other things that I probably need opposing counsel's insight on.

Let's -- all right, Mr. Gibbs. Let's go to deadlines for adding parties and deadlines for amending the pleadings.

So it's my understanding that I think the plaintiffs have recommended a post-fact deadline for adding parties. That is really not workable, in my opinion, because if there were to be a party amended, which I think frankly is not super likely, but if there were to be a meaningful party added, we're just inviting a new entire era of discovery and fighting about all the things that have maybe been resolved already in the case.

On the other hand, I don't think 45 days from today is particularly workable either because, in theory, the thing that could trigger the addition of a party is that they learn something that they don't know, and it seems pretty unlikely that they are going to learn a whole lot in the next 45 days if you are not able to really gear up

production faster than that.

MR. GIBBS: That's a fair point, Your Honor. The only thing I would say is the reason we thought a fairly short time line was appropriate is because given the nature of the case. The only -- the only reason they would plausibly add a new party is if it's somebody else who allegedly made a false statement that they think violates 10(b). They already know who made the statements. I don't think discovery is going to uncover a whole new vein of alleged false statements here. So I just think it's very unlikely.

And for the reasons you suggest, we don't think a cut-off date after fact discovery is closed, but, more than that, I think a party who gets added even very late in the fact discovery process is going to argue they've been prejudiced if, for example, a whole bunch of depositions have been taken before they were added as a party.

So there's nothing magic about the 45 days. My concern is I don't want to be in a situation where a bunch of depositions have been taken, a new defendant comes in and says I need to go and redepose people who have been deposed, because I didn't get a fair shot at asking my questions.

THE COURT: Okay. While you're there, what's your position about whether the automatic deadlines in the schedule, both to add parties and to amend the pleadings,

should require a showing of good cause or should be with the agreement of the parties?

MR. GIBBS: I think at this point -- well, I think I think about them differently. I don't think they need our agreement to add a party. Whether they should get the court's permission or not, I don't really have a strong view on. I think amending the pleadings is different.

You know, the pleadings process in securities cases is a lot unlike really any others. And so I, you know, I think it's fair to treat the pleadings here as much more settled than in a typical case, and I would say for that they should have to get our agreement or court approval at this point. They've had a very specific complaint approved under some very important procedural rules; and if they're going to change it now, we would want to be heard about that.

THE COURT: Okay. And, presumably, although you might not have a particular strong vote about adding a party, I might.

MR. GIBBS: Yes.

THE COURT: Okay. And when do you think the deadline for amending the pleadings should be, for bringing the motion to amend the pleadings, or if you agree to, if you decide that their suggestion is appropriate, to submitting that to the court and laying the table for the

case?

MR. GIBBS: Well, with apologies, I don't remember whether we proposed a date on that or not.

THE COURT: Yeah, I think that you guys have a date of -- your date for amendment is after the close of discovery, which is confusing based on your general hesitation to have amendment.

MR. GIBBS: Yes, I understand, Your Honor. I can't tell you that I know the thinking behind that. I'm just not sure.

THE COURT: Okay.

MR. GIBBS: Yeah, I just don't know, Your Honor.

THE COURT: Okay. I'm going to talk to opposing counsel. Before you sit down -- okay. We'll talk about privileged stuff in a minute.

MR. GIBBS: Okay. Thank you.

THE COURT: Okay. Mr. Blatchley, let's talk about adding parties and adding pleadings. My initial instinct is this: To pick a date for both that is sometime in the relatively near future, but not so unreasonable that you won't have received and processed any discovery. I am fine doing separate dates or joint dates. I believe that you should have to show cause for adding parties. Hopefully the amendments to pleadings could be agreed to, especially if they're early. I'm very concerned by a date that is --

coexists with the other fact discovery. I don't quite understand what your thinking is. So help me see.

MR. BLATCHLEY: So, and, again, Your Honor, this is -- we're, plaintiffs are amenable to moving those deadlines. And I appreciate the court's concern and Mr. Gibbs' concern about parties being added late. We do think that the universe of potential parties is obviously a very small one. And it was just a concern, the deadline being late in the case, was a concern about there is new scienter evidence. For example, with respect to a party that has not been named, that's one of the reasons why we think there isn't really a prejudice to those individuals because they will presumably be involved in the case somewhat because the company is going to be involved, but that --

THE COURT: But let's say they're gone. I mean, I don't know who these people are, so this is utterly hypothetical, but --

MR. BLATCHLEY: And I don't think it's worth -- we are fine moving those deadlines up. I should have just said that.

THE COURT: Oh, okay.

MR. BLATCHLEY: I just wanted to provide -- provide the court with a little bit of background on our thinking behind those deadlines. And, you know, I think so

long as -- as we have a deadline for amendment and adding parties that is somewhere in the neighborhood of after substantial completion, plaintiffs would be fine with that.

With respect to when that -- if that were to happen, if we were to amend the pleadings, I'm almost certain we would get a motion from Mr. Gibbs about that seeking to dismiss that. So I'm not sure if there's going to be a real issue there in terms of the -- you know, at least from plaintiffs' perspective, we're not going to amend the pleadings or add parties without a very good reason to do so.

THE COURT: Okay. So you would be -- you would be in agreement with some sort of good cause requirement. You want the date to be after the date for substantial production; and it's okay if it's the same date as long as it's not too soon, and it's okay if it's not too far away.

MR. BLATCHLEY: That -- that's accurate, except with respect to we don't think there should be a requirement showing a good cause. I'm just anticipating I'm going to get a motion requiring me to show that.

THE COURT: Okay. This is -- so how do you envision it working if I weren't to require a motion to show good cause? You envision that you would file the proposed amended complaint and that would shift the ball to their court to move to disallow it, but either way I would, in

theory, be applying a good cause standard. So isn't it better to be kind of transparent about it?

MR. BLATCHLEY: That's perfectly fine, Your Honor. I just --

THE COURT: Okay. Okay. Thank you. Hang on one second. Let me see -- and I suggest that Mr. Gibbs' prediction is correct, that given the unique nature of securities litigation these are probably less likely than sometimes, but it's better to be clear I think going forward.

Okay. I think that what I want to talk about now is the privilege issues. I want to talk about what I perceive as two issues that are outstanding in anticipating future privilege questions. The first is whether -- whether the defendants should be required to create a privilege log as to either the privileged communications or work product communications of -- between themselves or their representatives and their counsel in the related cases in all cases.

You've proposed that there is a kind of joint exception to not require privilege logging related to this litigation, but you don't want that proposal to extend to post-complaint date communications in the other cases. Is that right?

MR. BLATCHLEY: I think that that's correct, Your

Honor.

THE COURT: Okay. Tell me about this.

MR. BLATCHLEY: And I think that to the extent it would -- there's all things, I think we could certainly -- without giving up right away, the reason before that was -- was that, you know, listen, it's not a huge production log. I don't think a lot of our requests are going to -- to impinge on what they are doing in the related cases. But plaintiffs would agree, I believe, unless I get some yells over here --

THE COURT: Your Post-It's ready to rush over to the podium.

MR. BLATCHLEY: -- that we can agree that any of the litigation in the MDL need not be logged. Counsel in that -- in that litigation would be fine not logging.

THE COURT: Not logging from the triggering date of the complaint forward?

MR. BLATCHLEY: Yes. Exclusively between the parties and their counsel.

THE COURT: Okay. And that applies to work product as well.

MR. BLATCHLEY: Correct, Your Honor.

THE COURT: Okay. Good. That's the line I was thinking that makes sense.

Mr. Gibbs, do you want to talk me out of ruling in

your favor on that? Your co-counsel thinks you should not talk, perhaps.

MR. GIBBS: I think, yes, Your Honor, I figure I've been (inaudible).

THE COURT: Sure, sure.

MR. GIBBS: No, Your Honor, that's fine. I think counsel referenced only one of the related cases, but I think what the court is proposing is --

THE COURT: These related cases you don't have to log from the date of the complaint forward. I'm not talking about other litigation, although I really doubt that it's going to be part of document requests, completely unrelated litigation, but the protection that you all extend to one another is communications or work product post-date of this complaint in any of these related MDL cases.

MR. GIBBS: I think that would be fine, Your Honor. I just want to let the court know that in the protective order that was entered in the consumer side of the case by Judge Davis there is a provision in that regard. I think it's -- I think it is driving at essentially what Your Honor is proposing to do here, but I wanted you to be aware of it. I have a clean copy, if you would like.

THE COURT: That would be awesome. Thank you. I forgot to look for that.

MR. GIBBS: But Mr. McNab thought of it this

morning.

THE COURT: Yeah, can you bring that up?

MR. GIBBS: The relevant language is on page 10 of the protective order at paragraph 13.

MR. McNAB: May I, Your Honor?

THE COURT: Yeah. Yeah, please.

MR. McNAB: Thank you.

THE COURT: Thank you.

MR. GIBBS: And this one does not actually have the limitation to these related cases, although --

THE COURT: Page 10?

MR. GIBBS: Page 10.

THE COURT: Okay.

MR. GIBBS: Paragraph 13, at the very bottom of the page.

THE COURT: Mm-hmm. Okay. So what do you think the relevance is of the fact that --

Actually, do you mind grabbing a seat just so --

MR. BLATCHLEY: Sure.

THE COURT: We make our best recording from that microphone, and I don't want to miss out if this is about to be something we continue to discuss.

MR. GIBBS: Thank you, Your Honor.

THE COURT: Okay. So are you -- are you disagreeing with the line I just drew?

MR. GIBBS: No, I'm not disagreeing with the line you just drew.

THE COURT: Okay.

MR. GIBBS: I just thought you'd want to know that there's an order --

THE COURT: I do.

MR. GIBBS: -- in a related case that has similar language.

THE COURT: Yeah, that a higher power has said the same thing. That's reassuring.

MR. GIBBS: Yeah. We were -- I was going to propose that we just do what was done in the other case. I don't have a problem with adding the express qualifier that it's these related cases. That --

THE COURT: Okay. I will just to be consistent with what I had said, but I think as a practical matter --

MR. GIBBS: I agree.

THE COURT: -- it will be a vanishingly small privilege log of post-June 18th, 2017, communications that are with you and counsel -- your client and counsel that aren't in the MDL that would ever be relevant. So --

MR. GIBBS: I agree, Your Honor.

THE COURT: Go ahead.

MR. McNAB: Just a definitional thing, because we talked a lot about these related cases and then we talked

about the MDL. Earlier this afternoon these related cases included the Minnesota AG case, and I think that that should fall under this blanket description as well.

THE COURT: Okay. And do I assume that you intended that?

MR. BLATCHLEY: It wouldn't -- our discussion just now I understand it should be just MDL exclusive of the Minnesota Attorney General action. However, I don't think we would, you know --

THE COURT: It might be the exception that swallows the rule if we carve it out.

MR. BLATCHLEY: Yeah.

THE COURT: Okay. Thank you. Thanks for your flexibility.

So it will be MDL and the related Minnesota Attorney General action, as an appropriate way to describe it?

MR. GIBBS: I think so, Your Honor.

MR. BLATCHLEY: That's fine, Your Honor. Again, in our letter to Your Honor we just pointed out there are post-class period developments that could occur with other counsel that we would be interested in seeing.

THE COURT: Okay. And those will be on a log, and you can fight about it then.

MR. BLATCHLEY: Correct.

THE COURT: Okay. Thank you.

MR. BLATCHLEY: Thank you.

MR. GIBBS: Thank you, Your Honor.

THE COURT: Okay. Mr. Blatchley. If you need a minute to consult. Okay. Let's talk about the Rule 502(d) thing.

So I've done some research on this. I've done some reading. It seems -- it seems like your position is that they only get, in your mind, the protections of 502(d) if they agree to do no privilege review whatsoever?

MR. BLATCHLEY: Your Honor, let me just make sure that I --

THE COURT: Okay.

MR. BLATCHLEY: -- I've clarified that for you. I -- that was not our intent.

THE COURT: Okay.

MR. BLATCHLEY: And I apologize if we've been unclear in that in any way. It is not a no review requirement in order to get the protection. It was similar to -- and I'm not sure if Your Honor had an opportunity to read the letter we submitted to Your Honor on Friday. It's language like the one in the Target protective order saying if you do some sort of streamline review, you get to invoke the protection. Again, we thought that was very consistent with what the rule is supposed to do. It's supposed to make

discovery less expensive, more expeditious. We were trying to encourage defendants to get us the documents quicker. That's why --

THE COURT: It's supposed to do other things too. It's supposed to avoid expensive litigation about inadvertently disclosed things. It's supposed to reduce the level of panic that defendants who are going to be producing ginormous volumes of information might have even after a privilege review. So it's not that its value, protectiveness or efficiencies, only come with some kind of abdication of privilege review.

MR. BLATCHLEY: Right, but, Your Honor, but the whole idea behind the rule is so that you are not in that situation, but the idea is to reduce costs and burden. I just haven't heard anything from the other side about wanting to do that. And so just in terms of allowing for that protection, why not just tell us that you've done some sort of limited review and you want the protection. That's all we ask.

THE COURT: What if they tell you we've done a super robust review and we want the protection and here's our stuff in a timely fashion and it's not your concern how we spend our own internal money?

MR. BLATCHLEY: I think, again, the -- our problem with that kind of language or that notion is just we're not

serving the purpose of the rule. That's it.

THE COURT: Okay. Thank you.

I don't need to hear from you on that one.

MR. GIBBS: May I just (inaudible) --

THE COURT: Yes, you may. You may. One of the first things I learned from Judge Rosenbaum is when I was winning not to stand up, but I'm just --

MR. GIBBS: My purpose is not to argue, but just to alert the court there is also a provision covering this subject in the protective order from the consumer case.

THE COURT: Awesome. Tell me where.

MR. GIBBS: Page 9, paragraph 12.

THE COURT: And are you -- do you think page 9, paragraph 12 strikes the right balance?

MR. GIBBS: We do, Your Honor.

THE COURT: Thank you.

MR. GIBBS: Thank you.

THE COURT: Can I ask a question? You seem to suggest -- I guess the answer is always yes if I'm the one sitting up here. You seem to suggest in your letter that letters weren't necessary and that I could just look at the ESI protocol and the protective order to identify these areas of disagreement. Did I receive the ESI protocol and the protective order in anything but your letter?

UNIDENTIFIED MALE SPEAKER: No, Your Honor.

THE COURT: Did it come to the court in some other way?

UNIDENTIFIED MALE SPEAKER: No, Your Honor.

THE COURT: Okay. We've spent a fair amount of time trying to decide whether you'd filed something online, whether you'd sent it to Judge Davis' chambers, whether you'd sent it to me and I lost it. So your point wasn't that the letters were inappropriate. It's that the advocacy that was attached to A and B was not needed?

MR. GIBBS: That's correct.

THE COURT: I think -- yeah.

MR. MCNAB: Your Honor, I guess as a member of the local bar, it's been our experience that either you have a motion or you don't have a motion and in connection with 26(f) and Rule 16 that the materials are presented to the court the way, you know, the parties expect the court to receive with here are the things we agree upon in a 26(f) report, here are some things we agree upon, some things upon which we don't agree in a proposed protective order.

I think that maybe it was the final submission of the proposed protective order and ESI protocol by email from one of the parties that made it less than crystal clear that this was the last iteration. We agree with them; we had reached impasse; the parties had agreed these are the two documents that we want the court to have. We did disagree

with the parties submitting additional argument, if you will --

THE COURT: Okay. Got it.

MR. MCNAB: -- in the form of letter briefs.

THE COURT: But you thought it was appropriate for me to receive those two exhibits in that form. You just didn't like the additional advocacy.

MR. MCNAB: The editorial, yes, Your Honor.

THE COURT: Okay. Thank you. You can be seated.

MR. MCNAB: Thank you, Your Honor.

THE COURT: So I think that I can address -- why don't we just go through quickly what I'm going to do.

I am not going to require production of the attorney general production. I thought a lot about this. I've done a lot of review of both cases. I think that I have the authority to do so. I think that it would probably make sense on the part of the defendants, if they chose to do so, but I don't believe that it is the most efficient way to handle discovery in this case. I don't think it's actually going to promote any efficiencies. I don't think it's going to reduce the number of document requests, the number of discovery disputes, and, frankly, I think it could actually create some delay.

If the defendants thought that the best way to handle this was to turn it all over and say ask us if you

need anything else, that would be different, but that's not what I'm hearing. And they have reasonable thoughts about why it is both over and under-inclusive and thoughts about how it doesn't actually save them time.

I'm not convinced it's going to save you all time. It's just going to get you what you really want a lot sooner, which I appreciate. And I am going to try to create pressure on the defendants to make productions quickly, but just because there's an already gathered pool that may contain many, but not all, of the things you want doesn't mean that's the right place to start.

With respect to substantial completion, I have to spend a little bit of time looking at these dates. I agree that there needs to be a deadline for substantial good faith attempt to get the document requests produced. I suspect it will be somewhere between December and April. And what I need to do is look through the way these dates weave with the other dates for class certification to make sure that everybody has the opportunity to do what they need to do.

I share the plaintiffs' desire to get this case resolved quickly rather than slowly. I also think it's important to get discovery made as soon as possible so that depositions can be facilitated.

I am sympathetic to the fact that some of your team is getting ready for a big trial, but the defendants

are very well resourced, and I'm not -- there's not only a finite number of lawyers in the universe that could help you with this. So I'm not persuaded that you can't do both things at once. It would be different if we had a much less resourced party on the side of the defendants. And I'm not saying that limitations are no object, but I don't -- I don't agree that that convergence is going to take all pressure off.

I am going to adopt some version of the kind of creative interspersing of expert discovery related to class certification with class briefing. It sounds like, unless we had enough time to just do a fully multi-tiered process, this is an efficient way to manage that, especially with the -- what I've learned is the increasing centrality of expert testimony in this arena, but I want to look and figure out how I can make that work with the other things I'm going to do to the production issues.

I've already told you about the limits I'm going to impose on document discovery and requests for admission. Those will be captured in this order, but you can go ahead and use those as you're moving forward.

I am going to include a clear deadline to add parties and pleadings with a requirement of a showing of good cause. Let me say that although there's a requirement of a showing of good cause, I really would like you to agree

if there is a proposal to add a really obvious defendant, especially somebody who has been in the mix all along and won't really suffer undue prejudice, or to add to include clarifying language or specific language. Let's try to agree about those sort of things. I don't want to fight just for a fight.

We've agreed, and I appreciate it, on what has to be logged and what doesn't have to be logged in the privilege issue.

I am going to embrace what I think is, more or less, the defendants' position regarding 502(d). I am going to find similarly to as Judge Davis did that the 502(d) productions apply, regardless of the zeal with which the defendants choose to scour their documents before they hand them over. It will be an ambitious schedule, so there can't be too much zeal there, but I don't think that the rule is as narrowly construed as the plaintiffs advocate for, that it -- that its efficiencies are only served by a significant document production with relatively little culling. I think its efficiencies are served by reducing paranoia on both sides in order to facilitate production, particularly in massive -- not to threaten the defendants with the certainty that these will be massive productions, but in cases that give rise to massive productions, the more paranoid everyone is about accidentally disclosing something that could be

read to weigh privilege, the more cumbersome that production will become. I think that's the real meaning of 502(d). But it almost doesn't matter what the meaning was. I'm not necessarily an originalist. It matters more how it applies effectively in this case. And so I find that applying its protections, regardless of the exuberance of the defendants' or of the plaintiffs' privilege review, is the appropriate path to strike.

I am going to require something like we discussed with respect to conversations about document requests. This is more or less what I expect, and I've got to mull over whether to try to capture this in language in the 26(f) report.

I expect there to be the service of document requests that are as narrowly tailored as possible to get at what you want, with the collective understanding that we all share the responsibility for proportionality.

I expect that the defendants will respond not just by raising every objection under the sun, but by trying to tailor a response that can get at the important things.

I strongly expect parties to meet and confer before you bring discovery disputes to me. I am happy to do my job and resolve discovery disputes, but I am always disappointed if the briefing suggests that they're ships passing in the night. One side is objecting to what it

thinks the other one wants; the other side is asking for something completely different. That means you haven't met and conferred. So start meeting and conferring early. Keep it going up until you appear before me.

I ordinarily am very happy to use an informal approach to discovery disputes and, if appropriate, I'm willing to do it here. However, I don't want that to mean that you come to me at the drop of a hat. So I'm trying to strike the balance between really encouraging you to work together and being available for you. So I'm not going to rule out informal discovery disputes if there's some targeted thing we can do to make that happen.

I do expect the exchange -- it's not going to be appropriate for either side, but I think this is probably more directed at the defendant, not to share search terms and custodians. It is appropriate to have an ongoing conversation about search terms and custodians.

I do not agree with approaches where either side uses its own unilateral view of the case to frame what it believes the appropriate scope of discovery is. So I don't expect to see that here, but sometimes an objection to the discovery as being irrelevant is based entirely on one party's own belief that its view of the case is the correct one. Obviously, that's not going to hold a whole lot of persuasive weight with me.

As far as the timing on how to make this happen, I want rolling production of documents, which means that this is almost definitionally going to be a discussion, a discourse, a dialogue to try to identify how to get the documents that are needed and to try to identify custodians.

One last thing I will say is that I very much believe that ESI protocols and fights about ESI terms and custodians are about trying to figure out the best way to get the documents that are asked for in document requests. They don't have some separate life of generating discovery that might not be asked for in a document request or that might not be relevant to discovery. So thinking about how to tailor them to that end is the best way, and explaining to me why a custodian or a search term is likely to produce information that is the subject of an appropriate document request is the best way to think about it, in my estimation, and the best way to frame your advocacy if my optimism proves unfounded and you are not able to work out all of the areas of disagreement.

I think that I've foreshadowed either what I've done or most of what I'm going to do. Undoubtedly, I've missed something.

Mr. Blatchley, why don't you go first and tell me what you think I might have omitted and anything you want to argue with me about.

MR. BLATCHLEY: The one -- just, Your Honor, thank you for your rulings. The one thing I think that wasn't discussed just now, which I would appreciate the court's consideration of, is the privilege log deadlines. At least in the draft --

THE COURT: Oh, okay.

MR. BLATCHLEY: -- 26(f) report we had proposed I believe it was 28 days after every rolling production. Again, this is kind of part and parcel with our efforts to encourage the parties to be forthcoming about -- about, you know, producing discovery and producing privilege logs.

Defendants' proposal had privilege logs, no deadline at all, interim deadline for producing privilege logs and then a final production privilege log after the close of fact discovery --

THE COURT: Yeah, that won't work.

MR. BLATCHLEY: -- which made no sense to us. And we just ask you to consider that and --

THE COURT: So you are advocating for rolling logs with each production? So if a production generates, you know, a hundred thousand documents, the 50 that have been withheld should be the subject of a log within a month?

MR. BLATCHLEY: Correct.

THE COURT: Okay. Thank you. I'm going to ask Mr. Gibbs what he thinks about that.

I share opposing counsel's observation that getting the privilege log at the very end almost guarantees a big fat fight at the very end. So I'm trying to figure out how to move it forward. I can see that if we really are going to have truly rolling production this might be generating an awful lot of privilege logs, although I'm not sure that's so bad because each one is, you know, its own universe. Tell me what you think.

MR. GIBBS: Sure. Two things. The reason we wanted to have a deadline, a final deadline after the close of fact discovery is because plaintiffs want to reserve the right to continue requesting new documents up until 30 days before the close of fact discovery. I can't produce a privilege log before the documents are due. If this, whatever the time period is, applies to that final production, then I suppose it's moot, but that was the thinking behind it.

THE COURT: Oh, you wanted time to issue your privilege log after whatever the final production is?

MR. GIBBS: Correct, correct.

THE COURT: And is there a request to issue document requests 30 days ahead of the end, so they can get documents on the last day if needed?

MR. GIBBS: That's my understanding.

THE COURT: Okay. Is that your plan?

MR. BLATCHLEY: I believe that's correct. I don't want to misstate what the -- that sounds correct, Your Honor.

THE COURT: Okay. So you want time to generate that log afterwards, but you don't necessarily oppose rolling logs?

MR. GIBBS: I don't. And to be clear, the proposal was not that we withhold all of the privilege logs until that final deadline.

THE COURT: Okay. I think there was a miscommunication.

MR. GIBBS: Yeah. I apologize for that, Your Honor.

THE COURT: No. That's all right.

MR. GIBBS: We're fine with rolling privilege log productions. I didn't love the time, the specific time frame they wanted to impose just because I don't know in advance how big those logs are going to be. They might vary from one production to another. You know, as long as people are reasonable, I don't -- I don't have a problem with setting some kind of deadline to make sure that they keep flowing. I just -- I don't know in advance how big the logs are going to be for each production. I don't know if it's going to be concentrated in a single production.

THE COURT: Okay.

MR. GIBBS: I'm just trying to manage that uncertainty.

THE COURT: How about we say 30 days after you, the rolling production, you prepare a privilege log, unless the size of the withholding necessitates additional time, in which case I expect you all to work together to figure that out?

MR. GIBBS: That would be fine, Your Honor.

THE COURT: Okay. Is that all right with you, Mr. Blatchley?

MR. BLATCHLEY: That sounds fine, Your Honor.

THE COURT: Okay. I'm going to have you back up, because I sat you down before you were done with your list.

But tell me, while you are here, Any disagreement you want to make with the lines that I've drawn or any things you think I overlooked?

MR. GIBBS: No, Your Honor. I just have a question --

THE COURT: Okay.

MR. GIBBS: -- about other dates further out in the schedule. We had different views about some of those. My own view is I'm not sure it makes sense to actually resolve things like summary judgment and trial dates. And for the trial date, in particular, this is an MDL. We're not going to try the case here, so I don't think it makes

any sense to set a trial date.

THE COURT: Yeah, let's -- let's talk about this. Thank you for pointing that out. The list is very long.

Stay back up here for one second.

I recognize that there's a difference about whether this case is -- where this case might be tried and at what stage it might go back. And I realize I totally forgot to ask you about that, and that's important. What's your position about where it will be tried or might be tried and when it needs to go back?

MR. GIBBS: Yes. Thank you, Your Honor.

So our read of the MDL rule is that it's just an unconditional requirement that cases transferred to a district like this, pursuant to the MDL rules, have to go back to the transferor district for trial. I don't think there's any ambiguity in the rule about that. We've cited the *Lexecon, Inc., versus Milberg Weiss* case for that proposition. I haven't seen any authority to the contrary. So in our view it's just a certainty that trial has to happen in the transferor district.

At what point between now and trial the cases go back, it appears to me it varies case to case and we don't have a firm position on that right now. We're trying to balance the fact that this court obviously has some familiarity with the matter, but I also am sensitive to the

fact that if the case is going to go to trial in a different courtroom, we ought to give the other judge time to figure out the case a little bit too, so --

THE COURT: And will this whole case move as one or will this case move in chunks to several other courts?

MR. GIBBS: That's a good question. If I'm recalling correctly -- and I'm sure plaintiffs' counsel will correct me if I am wrong -- I believe on the securities class action side the cases were all filed in Louisiana, with the exception of a bondholder case that was filed in New York.

THE COURT: Okay.

MR. GIBBS: But the way I understand the sort of lead plaintiff/lead counsel process, it's the lead plaintiff/lead counsel have now subsumed the bondholder claims within this case.

THE COURT: And is the bondholder the IMG, or am I mixing that up?

MR. GIBBS: I believe that is, Your Honor.

THE COURT: Okay. So you think they all go to Louisiana to be tried?

MR. GIBBS: I do.

THE COURT: Okay. And you think there's no question mark about the fact that they have to be tried in Louisiana?

MR. GIBBS: That's my understanding of the rule, Your Honor.

THE COURT: And do you think that "tried" in the modern parlance also requires that they go to Louisiana for dispositive briefing or no?

MR. GIBBS: I haven't seen a rule to that effect.

THE COURT: Okay.

MR. GIBBS: I have seen cases transferred either before or during summary judgment briefing, which we've cited in the papers. I think if it were up to me, I probably wouldn't do it in the middle of briefing on dispositive motions. I'd probably decide I think it should go before or I think it should go after. I don't have a firm view on that right now.

THE COURT: What do you think about me setting a deadline by which the parties have to raise this issue to -- I mean, at some point we need that certainty of knowing where this case is going to be tried and what judge is going to be presiding over summary judgment. What do you think about, rather than setting these dates, we set sort of aspirational a date for summary judgment and a date by which this needs to be decided by Judge Davis?

MR. GIBBS: "This" meaning whether it stays or goes?

THE COURT: I mean, who decides, in your

estimation, who decides at what stage it goes? Judge Davis?

MR. GIBBS: You know, I, actually, I think it's the MDL panel. I could be wrong about that, but I think it's the MDL panel with input from Judge Davis.

THE COURT: Okay. I want to hear your perspective on this question too.

Thank you, Mr. Gibbs.

All right. Where do you think this case gets tried? Where do you think summary judgment happens? Who decides and when?

MR. BLATCHLEY: Okay. Thank you, Your Honor.

I think -- here's what I think plaintiffs' position is on that, and we've articulated that in the 26(f). We think -- just let me back up one second to just correct a few things that I'm sure were entirely inadvertent.

There were, let's see, six -- sorry -- five securities cases filed. *Craig*, which is the docket number, the low docket number, that we have here was originally filed in the Southern District of New York. The second case *Scott* was filed in Louisiana. *Thummeti* was filed in Louisiana. *IMG* was also filed in New York, transferred to Louisiana and then sent here. Just for clarification purposes.

It is correct that our client, the State of

Oregon, the lead plaintiff in this case, the only pleading that they have filed in this case is the consolidated complaint sustained by Judge Davis. That is their first and only pleading in this case. They're statute -- you know, empowered by statute, the private securities litigation format to do that and to do, to have the power of a lead plaintiff, to do a number of things that I don't think were contemplated with respect to the MDL transfer in a lot of the cases and certainly in decisions cited by defendants.

We cited to Your Honor the Manual For Complex Litigation, which says one of the ways -- you know, obviously, courts recognize that it's so much more efficient if you are going to do all the discovery in one court if you can be in that court for trial. That's clearly more efficient. We cited a method that the Manual for Complex Litigation has approved of doing that, which is asserting venue is appropriate in this jurisdiction. That's what we did when we filed our complaint. And those are the arguments that we would make to keep the trial in this case -- sorry -- to keep the trial in this court and before, you know, Judge Davis.

We would also expect that there could be a possibility of if -- and, again, this is I think the technical question. If the defendants want to move back to Louisiana at any point before the closure of pretrial

proceedings, I think the way that they do that -- and, again, I hope I'm not misstating the rule here -- is that they would seek a request for suggestion from the court that they do that, that Judge Davis would provide a suggestion to the MDL panel -- that's the terminology I believe that's used -- and he could say it should stay in Minnesota or should go back to Louisiana at that time. And I think that that's the process that -- that would be followed.

And, again, I think there's also the option that you could have discussions between the judges. Obviously, after *Lexecon* courts were trying to figure out how do we, you know, make it more efficient where we have cases where everything in a case has happened in discovery, how do we get the trial there. I think the way -- one of the ways that courts have figured out how to do that is to say once it is transferred back to the court in which -- that receives it back can then transfer it back to, for example, the District of Minnesota.

Again, I think we're both in agreement at this stage that the case is properly here now and this is something for much later.

THE COURT: So when we say "much later," do you think that summary judgment is included at least in the kind of superficial assessment as opposed to the more nuanced case specific reasons that you talk about, maybe this case

being an exception where it's appropriate to try it here? But let's say it's a case where that's not true and it has to return home perhaps to Louisiana. Do you anticipate in the ordinary course that that includes summary judgment being resolved here and then it goes home?

MR. BLATCHLEY: Correct. Absolutely, Your Honor. I don't think there's any reason to --

THE COURT: Change that up? Okay.

MR. BLATCHLEY: Not after Your Honor and the court has spent so much time --

THE COURT: Yeah. Okay.

MR. BLATCHLEY: -- in discovery.

THE COURT: Do you think that we ought to set a deadline by which we talk this through, or should the court butt out and at some point one of you is going to raise it?

MR. BLATCHLEY: Yeah, I believe defendants will. I've been trying to get an answer out of defendants about when they plan on making that motion. I was told that the parties get to keep to themselves when they decide to make the motions they want to make.

THE COURT: Okay.

MR. BLATCHLEY: But, you know, I don't think in principle we would oppose that.

THE COURT: Okay. I'll consult with Judge Davis about this and see if he has any two cents. He's got vastly

more experience than I do in managing MDLs. So thank you.

MR. BLATCHLEY: Yeah. I would -- yeah. And I would expect, you know, given the pending Minnesota Attorney General action, the fact that we haven't yet seen a settlement in the consumer case, that it doesn't make any sense at all, especially after Your Honor and Judge Davis has spent so much time on this matter, for it to go back to Louisiana.

THE COURT: Okay. Thank you. Anything else on your list?

MR. BLATCHLEY: I did have just quickly two other things.

I really appreciate and respect -- respect Your Honor's decision concerning the MDL -- sorry -- the attorney general documents.

I did want to just raise as a preliminary matter, because I heard Mr. Gibbs say that he would be amenable to producing all the documents in that litigation that relate to what we term in the -- in our complaint as kind of the internal audit allegations and the document -- the expert report that has been produced in the case reflecting the $3.5 million overbilling number. And we would request that Your Honor consider requiring the production of those documents right away. We don't seem to have a dispute over them, and I think it would make sense to order those just be

produced.

And then second is with respect to the transcripts, the deposition transcripts in the Minnesota Attorney General action. I think all of those are going to be at some point relevant, because we're talking again about overlapping witnesses, especially with respect to the experts in that case, which are, you know, going to speak to those internal audit allegations.

And then the unredacted pleadings, we still don't have access to those, which, again, these are court documents. We now have a protective order, presumably. We'd ask that those be produced, again with the push of a -- push of a button.

THE COURT: Okay. Thank you.

MR. BLATCHLEY: Thank you.

THE COURT: Mr. Gibbs, three categories there. The first category, that Mr. Blatchley perceives you have agreed to produce related to the audit and the 3.5 million observation.

MR. GIBBS: I used that as an example of something they could ask for that would be very different from asking for wholesale production of the entire Minnesota AG case production. I stand by that, and I'm happy to meet and confer with them about that. I don't think it's appropriate to ask the court to issue an order on the fly when we

haven't actually hashed out exactly what that means, what the scope is, what I, you know --

THE COURT: What you're talking about. Okay.

MR. GIBBS: Yeah. I'm sorry. I don't think it's fair to ask the court to put me under a discovery order based on a colloquy here in court. I'm happy to meet and confer with Mr. Blatchley; and if we actually are in agreement on what we're talking about, then we will produce it.

THE COURT: How about the transcripts?

MR. GIBBS: The transcripts of all the depositions?

THE COURT: The deposition transcripts.

MR. GIBBS: Honestly, I haven't had a chance to think about that. I mean, the unredacted pleadings I think is probably pretty easy now that we have a protective order in place.

THE COURT: That's a "yes" on the unredacted pleadings?

MR. GIBBS: Yes.

THE COURT: Okay. I want to order you to do something, so I'm going to order you to turn over the unredacted pleadings.

But let's talk about the deposition transcripts for a moment. This seems like a really good example of

something that's just smart to turn over, unless there are individual witnesses there that really have nothing to do with this case. Presumably, you have the list of how many people were deposed, have been deposed in the Minnesota AG case, and you could take a look and see what you think about those. Right?

MR. GIBBS: It depends on who you mean by "you." I personally don't have the list here in front of me.

THE COURT: Of course not.

MR. GIBBS: Of course, my team does. And I'm more than happy to consider it. I understand the court's guidance on that.

THE COURT: Okay.

MR. GIBBS: And -- but I'm only hesitating because I don't personally know what's in there, if there's testimony about individual consumers and their private information. You know, I may need to be worrying about that.

THE COURT: Okay.

MR. GIBBS: But I understand what the court is saying about that, so --

THE COURT: Okay.

MR. GIBBS: I just need some time with my other team.

THE COURT: I'm not going to micromanage either

the concession that opposing counsel thinks you made about the audit or the deposition transcripts, except I think you've heard my thoughts.

I am going to require you to produce the unredacted pleadings as soon as is practicable.

MR. GIBBS: Thank you, Your Honor.

THE COURT: So one and three.

Yeah.

MR. BLATCHLEY: Your Honor, I was just going to mention the privacy issues. Again, we thought we have a protective order.

THE COURT: He's going to look. I think he's going to give them to you, but I'm an optimist.

And, obviously, if you think that there's one that's relevant that you are entitled to and they disagree, that's the perfect thing to bring to me. You can -- that's probably an ideally discreet issue to bring through the informal process too. So --

Anything else on your list?

MR. BLATCHLEY: Just one other thing --

THE COURT: Okay. Come on up.

MR. BLATCHLEY: -- which I think you just alluded to, just for clarity of moving forward. It -- it seems that it would be at least plaintiffs' preference to be able to bring disputes to Your Honor, discovery disputes, you know,

in the, obviously, in the way that that best suits the court. I just wanted your guidance as to, you know, how we should go about doing that. Is a joint conference call -- should we contact chambers? Would you like letter briefs? And I was just -- I want to make sure that we're proceeding in the way that the court wants, and I think, you know, we'll take your guidance in that regard. I just wanted to get that cleared up.

THE COURT: Okay. Sure. Let me just say that in my opinion it takes two to tango, meaning you both have to agree that the informal approach is the appropriate one for a particular dispute.

Let me also say that the vast majority of disputes in front of me are raised informally. I'll tell you what that looks like and how it works, but most people choose that. In part, it's cheaper. I think in a case like this the real value is it's much, much faster.

I leave it to either of you to decide that it's not appropriate in a particular instance. And I'm not going to, you know, cast aspersions or have negative inferences if you are not willing to bring it to me in that situation.

If you do choose formal briefing and I think it would have been much more efficient to bring it informally, I will point that out after the fact, but I'm not going to require that just because one party wants it, the other has

to yield.

I think that, you know, sometimes it can be really good for targeted things. There's 15 people that were deposed in the Minnesota AG case; 13 of them you are willing to turn over; 2 absolutely not. You've got two pages of reasons why they should; you've got two pages of reasons why they shouldn't. That's just a perfect one.

If anybody is using the word "sanctions," I'd rather see that in a formal motion. I don't expect to be seeing that word much in this litigation.

If I feel like the informal process has made me so remarkably available that I've created a monster, which I have absolutely done in other -- another one of my cases right now, I'll cut you off and say that you have to use the formal process, because maybe it will slow things down. Again, I don't expect that here.

Here's the way it works as a practical matter. The meeting and conferring requirement is equally robust no matter how you bring the dispute to me.

Also, Judge Davis is really in charge of this case; and if he would prefer to handle these matters instead of me, I will find that out and let you know that. If he would prefer that you start with me, but sometimes he will get involved, he gets to call those shots.

If you want to bring something to my attention and

you can't work it out, you call Kathy, Exhibit A, and she'll give you a date on my calendar. Sometimes immediately I can get you in within just a couple of days. Other times we can give you a week, if you need it, to get your ducks in a row.

The day before, and I'd like it to be by 5 o'clock the day before the dispute call, you submit letters to chambers' email, CC opposing counsel. These aren't confidential settlement letters, but just email them to the court.

Try to strike a balance between, you know, effective advocacy and being concise, because keep in mind I will be getting these 5 o'clock the day before and you have no idea what else I've got the next day. So don't give me an enormous ton.

You are free to cite law, but you don't always have to. You all know better than I do that the vast majority of these decisions are based on the unique facts and balances of the specific case and there isn't always a case right on point. You don't need to include the stock language about proportionality and the Rules of Civil Procedure. Assume I've got all that. But if there are a couple of cases that really grapple with the issue that you are talking about, feel free to cite them. The same thing goes for the exhibits.

I don't want to engage in a lot of time about the

history of your disagreement. I'd like to know where the disagreement lands now and what you're asking me to resolve.

If there's a particular interrogatory in dispute, feel free to cut and paste it right into the letter. I don't necessarily need, you know, the 50 pages of interrogatories and the 50 pages of responses just to look at the one that matters; but if there is something you'd like me to look at that's an attachment, you may totally attach it.

I don't set a page limit for these. I've only rarely regretted that. But I do hope that, you know, it will be kind of constrained to just what I need to decide the issue.

It's also totally acceptable to raise multiple issues in these letters, as long as you all are in agreement about what those multiple issues are going to be. I'm always a little bummed out because it suggests a meet and confer failure if one side is writing a letter about three issues and the other side is writing a letter about two completely other issues. That means you all don't know what's brought you to my chambers.

I get on the phone. I hear everybody out. I will record the call for you. I issue a ruling right then followed by a very brief order.

Everybody always wants to know whether you can

appeal it, although nobody ever has appealed one of my rulings from an informal discovery dispute proceeding. I don't have a prohibition against appealing them. I'm not sure how excited Judge Davis is going to be to see an appeal from something that you bring to me through this process. Because there isn't a lengthy opinion, he'd have to listen to the transcript or you would have to, you know, just brief it up for him.

So, you know, choose your fights wisely. You all know that discovery discretion is left very much to the magistrate judge in the first instance, not that I'm infallible, but I think that allows a certain room for mistakes before Judge Davis really wants to hear about it. I leave that to your wisdom.

So that's kind of how it works. And, like I said, it's up to you whether to use it. And it's perfectly appropriate to use it for some disagreements and not for others.

Did that answer your question?

MR. BLATCHLEY: Yeah, that's very helpful. Thank you, Your Honor.

THE COURT: Okay. Any questions that have been raised for you all as a result of that?

MR. McNAB: No. Thank you, Your Honor. Our client has had the benefit of both formal and

informal dispute --

THE COURT: That's right. I think we've done both.

MR. McNAB: So we appreciate that. Thank you.

THE COURT: Okay. Good.

Well, you've got the podium. Anything else?

MR. BLATCHLEY: I think that's it, Your Honor.

THE COURT: Okay. I'm going to remember something I forgot to ask you just as soon as I go home tonight and try to put this into writing.

Mr. Gibbs, anything else?

MR. GIBBS: No, Your Honor.

THE COURT: Okay. I think we are in recess. I am going to talk to Judge Davis about just a couple -- so we're not in recess. I'm going to talk to just Judge Davis about a couple other things that have come up today. And if I feel like things that he decides can't just be captured in the text of the 26(f) or something else, I'll email both counsel and just let you know about that or where to look for it in an order or the minutes. But, otherwise, if he's in agreement with the lines that I've drawn in terms of managing the case, and if he's in agreement that I continue to be the appropriate recipient of future disagreements, let's assume that to be true. Okay?

Now we are in recess. Thank you, all.

MR. BLATCHLEY: Thank you, Your Honor.

MR. MCNAB: Thank you very much, Your Honor.

MR. GIBBS: Thank you, Your Honor.

(Court adjourned.)

* * *

I, Renee A. Rogge, certify that the foregoing is a correct transcript to the best of my ability from the official digital recording in the above-entitled matter.

Certified by: /s/Renee A. Rogge
Renee A. Rogge, RMR-CRR